

UNITED STATES TAX COURT
WASHINGTON, DC 20217

PA

GERARD J. LEVINS & ELIZABETH M.)	
LEVINS,)	
)	
Petitioners,)	
)	
v.)	Docket No. 19136-18 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER AND DECISION

This collection case is before us on the Commissioner’s motion for summary judgment. Because we find that the Commissioner did not abuse his discretion, we grant the motion.

Background

The Levinses are married taxpayers who filed joint returns at all relevant times. In 2017, the Commissioner assessed liabilities against the Levinses for 2014 and 2016. On February 20, 2018, the Commissioner sent the Levinses a Notice of Federal Tax Lien. The lien listed an unpaid balance of \$1,688 for 2014 and \$59,569 for 2016.¹

On February 27, 2018, the Levinses paid their tax liabilities in full for 2014 and 2016. The Commissioner released the tax lien the following month.

The Levinses timely requested a collection hearing in response to the release of the lien. They asked the Commissioner to withdraw the lien, claiming withdrawal would be in the “best interests of the taxpayer and the United States”. In support, the Levinses asserted the lien had an adverse effect on their credit history and Mr. Levins’s ability to grow his business. If the lien was withdrawn,

¹All monetary amounts are rounded to the nearest dollar.

the Levinses argued that Mr. Levins could “make more money which would result in paying more taxes.” The Levinses did not dispute the underlying liability.

A collection hearing occurred on June 15, 2018. During the hearing, the settlement officer explained to Mr. Levins that the Commissioner could not withdraw the lien after its release because the Levinses were not in compliance with their 2017 and 2018 payment obligations. Mr. Levins requested extra time to file and pay their 2017 taxes and become current with their 2018 estimated taxes. The settlement officer granted his request.

The Levinses filed and paid their estimated taxes for the first two quarters of 2018. They also provided a draft copy of 2017 Form 1040, U.S. Individual Income Tax Return, showing a projected tax of \$34,644. However, they did not file or pay their 2017 taxes.

On August 27, 2018, the Commissioner issued a Notice of Determination to the Levins. The notice rejected the lien withdrawal because the Levinses were not in compliance with their 2017 estimated tax payments. The notice also considered additional lien withdrawal options under section 6323(j).² However, it rejected withdrawal under section 6323(j), stating that nothing in the collection file “indicates withdrawal of the filed lien should be considered” and the Levinses “provided no additional information” supporting withdrawal.

In September 2018, the Levinses timely filed a petition with this Court. The Levinses claim the Commissioner erred when he denied the lien withdrawal because they filed an extension for their 2017 taxes and intended to pay in full before the extension deadline.

On July 18, 2019, the Commissioner filed a Motion for Summary Judgment. He argued the settlement officer did not abuse her discretion when she denied the lien withdrawal because the Levinses were not current on their estimated payments and did not provide information supporting why the lien should be withdrawn. The Commissioner noted that the decision to withdraw a lien is permissive and within the settlement officer’s discretion.

²Unless otherwise indicated, all section references are to the Internal Revenue Code in effect at all relevant times, and all Rule references are to the Tax Court Rules of Practice and Procedure.

The Levinses replied to the Commissioner's Motion for Summary Judgment, saying only "Petitioners do not object to respondent's motion for summary judgment."

Discussion

The issue before the Court is whether we should grant the Commissioner's motion for summary judgment. Under Rule 121(a), either party may move for summary judgment regarding all or any part of the legal issues in a controversy. We may grant summary judgment only if there is no genuine dispute of material fact.³ The party moving for summary judgment bears the burden of demonstrating that there is no genuine dispute of material fact.⁴ If the nonmoving party does not present opposing evidence to the motion for summary judgment, the moving party must still demonstrate the absence of a genuine dispute of material facts.⁵

This Court has jurisdiction to review the Commissioner's collection determinations.⁶

The underlying tax liabilities in this case are not in dispute. When the underlying liability is not at issue, this Court reviews the Commissioner's collection determination for an abuse of discretion.⁷ When making a determination, the Commissioner must (1) verify that requirements of applicable law and administrative procedure have been met, (2) consider issues raised by the taxpayer, and (3) decide whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.⁸ To prove abuse of discretion, the taxpayer must show the Commissioner's decision was arbitrary, capricious, or without sound basis in law or fact.⁹

³Rule 121(b).

⁴Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994).

⁵Adickes v. S. H. Kress & Co., 398 U.S. 144, 160 (1970); Robinson v. Commissioner, T.C. Memo 2005-70, 89 T.C.M. (CCH) 998, 1000 (2005).

⁶Sec. 6320(c); Sec. 6330(d)(1).

⁷Sego v. Commissioner, 114 T.C. 604, 610 (2000); Goza v. Commissioner, 114 T.C. 176, 182 (2000).

⁸Sec. 6330(c)(3).

⁹Woodral v. Commissioner, 112 T.C. 19, 23 (1999).

The Commissioner did not abuse his discretion when he denied the Levins's request to withdraw the lien.

The settlement officer reviewed the administrative record and verified that legal and procedural requirements were met.

The settlement officer considered issues raised by the Levinses. The Levinses requested lien withdrawal, reasoning it would be in the best interest of both parties. Section 6323(j)(1)(D) permits the Commissioner to withdraw a lien if the Commissioner determines that withdrawal would be in the best interests of the taxpayer and the United States. A settlement officer may grant withdrawal after release if certain conditions are met, including the taxpayers' compliance with filing requirements.¹⁰ To comply, taxpayers must be current on their filing requirements for the prior three years and estimated payments have been paid.¹¹ Discretion to grant a lien withdrawal lies with the Commissioner; however the Commissioner may not grant withdrawal if conditions authorizing withdrawal are not present.¹²

The settlement officer considered withdrawal, but denied it because the Levinses had not complied with their 2017 and 2018 payment obligations. The settlement officer gave the Levinses additional time to get current for those tax years. The Levinses paid their 2018 taxes but not their 2017 taxes. The settlement officer thus considered the withdrawal, but denied it for lack of compliance.

The Levinses also did not submit any evidence in support of their claim that withdrawal would be in the best interest of both parties. A "bare assertion" that a lien withdrawal would benefit the United States is insufficient to establish a basis for that withdrawal.¹³

The Commissioner also balanced the needs of the taxpayers with those of the government to ensure the collection action was no more intrusive than necessary. The Levinses did not demonstrate that the lien was unduly intrusive and the settlement officer found the lien was necessary to protect the government's interest in their assets.

¹⁰I.R.M. 5.12.9.9(4).

¹¹I.R.M. 5.12.9.9(7).

¹²Sec. 301.6323(j)-1(c), *Proced. & Admin. Regs.*

¹³Richards v. Commissioner, T.C. Memo 2019-89, at *10.

Conclusion

There is no genuine dispute as to any material fact, and we must render a decision for the Commissioner as a matter of law. Accordingly, it is

ORDERED that the Commissioner's motion for summary judgment, filed July 18, 2019, is granted. It is further

ORDERED AND DECIDED that the Commissioner's Notice of Determination Concerning Collection Actions(s) Under Section 6320 and/or 6330 of the Internal Revenue Code, dated August 27, 2018, is sustained.

(Signed) Ronald L. Buch
Judge

Entered: **AUG 29 2019**